

IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

COMPLETE TITLE OF CASE

CURTIS TAYLOR,

Appellant,

v.

DIVISION OF EMPLOYMENT SECURITY,

Respondent.

DOCKET NUMBER WD78931

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: May 10, 2016

APPEAL FROM

The Labor and Industrial Relations Commission

JUDGES

Division IV: Ahuja, C.J., and Pfeiffer and Mitchell, JJ.

CONCURRING.

ATTORNEYS

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MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

CURTIS TAYLOR,

Appellant,

v.

DIVISION OF EMPLOYMENT
SECURITY,

Respondent.

OPINION FILED:
May 10, 2016

WD78931

Labor and Industrial Relations Commission

Before Division IV Judges:

Alok Ahuja, Chief Judge, and Mark D. Pfeiffer and Karen
King Mitchell, Judges

Mr. Curtis Taylor ("Claimant") appeals from an order of the Labor and Industrial Relations Commission, which affirmed and adopted the decision of the Appeals Tribunal of the Division of Employment Security dismissing Claimant's appeal of the denial of unemployment benefits for failure to show good cause to excuse his failure to participate in a telephone hearing scheduled before the Appeals Tribunal.

In its ruling, the Commission identified three reasons for its conclusion that Claimant failed to act in good faith and reasonably under all the circumstances: (1) Claimant chose to use a cellular phone and in a location with intermittent cellular coverage; (2) after Claimant's first phone call at 12:30 p.m. was dropped, Claimant "did not immediately dial the telephone number again" to join the conference bridge; and (3) "At the same time as the hearing, the claimant chose to be responsible for a young child." Claimant's telephone hearing on April 2, 2015, was scheduled for 12:30 p.m., and the appeals hearing referee dismissed the appeal at 12:35 p.m.

REVERSED AND REMANDED.

Division IV holds:

1. None of the Division's regulations, including the regulation for telephone hearings (8 CSR 10-5.030), specifically prohibits the use of cellular phones. The record shows that

Claimant was ready, willing, and able to participate in the April 2 hearing, and he made an affirmative effort to appear at the time he was instructed to do so. Claimant's actions do not evince inappropriate conduct or indifference to the need to participate in a telephone hearing at the time designated for doing so. Hence, the Commission abused its discretion in refusing to set aside the dismissal on the grounds that Claimant used a cellular phone to participate in the hearing where that cellular phone briefly experienced technical difficulties.

2. The Division has implemented an "unwritten policy" outside of its regulatory authority to conclude that claimants should only be entitled to an "immediate" time frame to successfully redial the conference bridge as a "reasonable" delay. There is nothing "liberal" about this "construction" and, lacking in regulatory authority and notification to Claimant about time limitations for participating in the telephone appeal, the Commission's reliance upon its unwritten "immediate" telephone hearing appearance rule was an abuse of discretion.

3. There is no regulation prohibiting an adult from caring for a young child while participating in a telephone appeal hearing. The presence of a young child for whom the claimant is caring at the time of the telephone appeal hearing does not evince inappropriate conduct or indifference to the need to be available for a telephone hearing. The Commission's conclusion to the contrary was an abuse of discretion.

4. Because Claimant acted in good faith and reasonably, the Commission abused its discretion in refusing to set aside the dismissal. Because the Commission's decision addressed only Claimant's failure to appear, we reverse and remand for a decision on the merits.

Opinion by: Mark D. Pfeiffer, Judge

May 10, 2016

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